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# Th13a

Appeal Filed: 6/29/2021  
Action Deadline: None  
Staff: Sara Pfeifer - SC  
Staff Report: 8/20/2021  
Hearing Date: 9/9/2021

## **STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION**

**Appeal Number:** A-2-MAR-21-0045

**Applicant:** Bolinas Community Land Trust

**Appellant:** H. Roland Crotts

**Local Government:** Marin County

**Local Decision:** Marin County Coastal Development Permit Number P2835 approved unanimously by the Marin County Board of Supervisors on June 8, 2021

**Project Location:** Mostly vacant and sloping property at 31 Wharf Road in the unincorporated community of Bolinas in western Marin County (APN 193-061-03)

**Project Description:** Construction of an 8-unit affordable housing and commercial mixed-use development in two two-story buildings totaling some 10,000 square feet with underground and surface parking, utility connections, landscaping, and related development

**Staff Recommendation:** No Substantial Issue

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### **IMPORTANT HEARING PROCEDURAL NOTE**

Please note that this is a substantial issue hearing only, and testimony will be taken *only* on the question of whether the appeal raises a substantial issue. Such testimony is generally limited to three minutes total per side (although the Commission's Chair has the discretion to modify these time limits), so please plan your testimony accordingly. Only the Applicant, persons who opposed the application before the local government, the local government, and their proxies/representatives are allowed to testify during this

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substantial issue phase of the hearing. Other interested parties may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, then the Commission takes jurisdiction over the underlying coastal development permit (CDP) application and will then review that application at a future Commission meeting, at which time all persons are invited to testify. If the Commission finds that the appeal does *not* raise a substantial issue, then the local government CDP decision stands, and is thus final and effective.

### **SUMMARY OF STAFF RECOMMENDATION**

Marin County approved a coastal development permit (CDP) authorizing the construction of a two-building affordable housing and commercial mixed-use project in the unincorporated downtown Bollinas area of Marin County. The Appellant contends that the County-approved project raises County Local Coastal Program (LCP) conformance issues related to hazardous site conditions, views and compatibility, water supply, habitat protection, and circulation. Staff has evaluated these contentions and does not find them to be substantial issues.

Specifically, the County's record shows that there isn't anything extraordinary about this site that would preclude development of it, including related to site conditions and hazards, and the County has included a series of requirements to protect coastal resources, including a requirement to comply with the recommendations of the project geotechnical evaluation. Similarly, although large structures, the project incorporates design and other features that should allow it to appropriately fit into the community aesthetic and the public viewshed, and should not result in significant adverse public view or compatibility impacts. Finally, the project is nearly 100 yards from Bollinas Lagoon and shouldn't lead to adverse impacts to it, can be served by water, and shouldn't lead to significant traffic of a type that would suggest that the project cannot be accommodated under the LCP, including as it will provide housing options for individuals who may work in Bollinas and thus reduce the need for employee commutes.

Finally, as indicated, the project would provide 8 units of critically needed affordable housing for low and very low-income individuals and families, helping to address what is a critical need in western Marin, as well as the State coastal zone more broadly. These types of projects, especially when they can be accommodated in areas where they do not present significant coastal resource concerns, such as in this case, are critical to reaching LCP, Coastal Act, and statewide goals related to affordable housing.

Accordingly, staff recommends that the Commission determine that the appeal contentions do not raise a substantial LCP or Coastal Act conformance issue, and that the Commission decline to take jurisdiction over the CDP application for the proposed project. The single motion and resolution to do so is found on page 4 below.

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**EXHIBITS**

- Exhibit 1 – Project Location Map
- Exhibit 2 – Project Site Photos
- Exhibit 3 – County-Approved Project Plans
- Exhibit 4 – Marin County Final Local CDP Action Notice
- Exhibit 5 – Appeal of Marin County CDP Action

## **1. MOTION AND RESOLUTION**

Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of no substantial issue would mean that the Commission would not take jurisdiction over the underlying CDP application for the proposed project, and would not conduct further hearings on this matter, and that the local government decision to approve the CDP stands and is thus final and effective. To implement this recommendation, staff recommends a **yes** vote on the following motion which, if passed, will result in a Commission finding of no substantial issue. Failure of this motion will result in a finding of substantial issue and the Commission will instead take jurisdiction over the subject CDP application for future hearing and action. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission determine that Appeal Number A-2-MAR-21-0045 raises **no substantial issue** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and I recommend a **yes** vote.*

***Resolution to Find No Substantial Issue:** The Commission hereby finds that Appeal Number A-2-MAR-21-0045 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Marin County Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

## **2. FINDINGS AND DECLARATIONS**

### **A. Project Location and Description**

The proposed project is located on a mostly vacant/undeveloped,<sup>1</sup> sloping,<sup>2</sup> and just over 100,000 square-foot (2.3 acres) property at 31 Wharf Road in downtown Bollinas in unincorporated western Marin County, almost a hundred yards to the west of Bollinas Lagoon. The portion of the site where the project would take place is designated C-RA-B2 (Coastal, Residential, Agricultural) and C-VCR (Coastal, Visitor Serving, Commercial, Residential) in the LCP,<sup>3</sup> and is surrounded by residential and commercial

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<sup>1</sup> The site includes a shed, and various remnants of past development, but is otherwise vacant and undeveloped.

<sup>2</sup> The site is moderately sloped nearest Wharf Road, and then slopes upwards and away from Wharf Road roughly 44% towards the back of the property.

<sup>3</sup> The property is split designated in the LCP's Land Use Plan (LUP)/Implementation Plan (IP) as C-NC (Coastal, Neighborhood Commercial)/C-VCR (Coastal, Visitor Serving, Commercial, Residential) for the portion nearest Wharf Road, and as C-SF5 (Coastal, Single Family, 2-5 Units per Acre)/C-RA-B2 (Coastal, Residential Agricultural) for the portion furthest away from Wharf Road. The entirety of the proposed project is contained within the designations nearest Wharf Road.

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uses forming the small village core. See **Exhibit 1** for a location map, and see **Exhibit 2** for photographs of the site and surrounding area.

The County-approved project would allow for the construction of a new 10,268 square-foot mixed-use development in two 2-story structures, including 8,629 square feet to accommodate eight units of affordable housing (in individual 2- and 3-bedroom units) and 1,639 square feet of commercial space (in the building fronting Wharf Road). Parking would be accommodated via 16 surface-level garage parking spaces behind the southernmost building and accessed via a driveway on the east side of the buildings,<sup>4</sup> and 13 underground parking spaces (including one ADA space) as well as 10 bicycle storage lockers in an underground garage below the southernmost building with access off Wharf Road. The project also includes adding four on-street public parking spaces (including an ADA space), ADA sidewalks, and ramps, as well as 6 public bicycle parking spaces in the right-of-way fronting the site. Water and sewer services would be provided by the Bolinas Community Public Utility District (BCPUD). See **Exhibit 3** for the County-approved project plans.

### **B. Marin County CDP Approval**

On April 12, 2021, the Marin County Planning Commission approved CDP P2835 authorizing the above-described mixed-use development, including 8 affordable housing at the subject site by a 4-1 vote. The Planning Commission's decision was subsequently appealed (by the current Appellant before the Coastal Commission) to the County Board of Supervisors, and the Board subsequently unanimously upheld the approval on June 8, 2021. The County's notice of the Board's final CDP action was received in the Coastal Commission's North Central Coast District Office on June 15, 2021 (see **Exhibit 4**), and the Coastal Commission's ten-working-day appeal period for this action began on June 16, 2021 and concluded at 5pm on June 29, 2021. One valid appeal (discussed below and shown in **Exhibit 5**) was received during the appeal period.

### **C. Appeal Procedures**

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. This County CDP decision is appealable to the Commission because the project site is located between the sea and the first public road paralleling the sea, which in this case

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<sup>4</sup> Where the driveway would be located on the adjacent 41 Wharf Road property via an easement.

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is the Shoreline Highway/Highway 1, and because the project is not designated as the principally permitted use under the LCP.

For appeals of a CDP approval, grounds for appeal are limited to allegations that the approved development does not conform to the LCP and/or to Coastal Act public access provisions. For appeals of a CDP denial, where allowed (i.e., only allowed in extremely limited circumstances – see description of appealable actions, above), the grounds for appeal are limited to allegations that the development conforms to the LCP and to Coastal Act public access provisions.

The Commission's consideration of appeals is a two-step process. The first step is determining whether the appeal raises a substantial issue that the Commission, in the exercise of its discretion, finds to be significant enough to warrant the Commission taking jurisdiction over the CDP application. This step is often referred to as the "substantial issue" phase of an appeal. The Commission is required to begin its hearing on an appeal and address at least the substantial issue question within 49 working days of the filing of the appeal unless the applicant has waived that requirement (which the Applicant in this case has), in which case there is no deadline.

The Coastal Act and the Commission's implementing regulations are structured such that a substantial issue is presumed when the Commission acts on this question unless the Commission finds that an appeal does *not* raise a substantial issue, and the Commission generally considers a number of factors in making that determination.<sup>5</sup> At this stage, the Commission may only consider contentions raised by the appeal. At the substantial issue hearing, staff will make a recommendation for the Commission to find either substantial issue or no substantial issue. If staff makes the former recommendation, the Commission will not take testimony at the hearing on the substantial issue recommendation unless at least three Commissioners request it, and, if no such full hearing is requested, a substantial issue is automatically found. If the Commission does take testimony, it is generally (and at the discretion of the Commission Chair) limited to three minutes total per side, and only the Applicant, aggrieved persons, the local government, and their proxies/representatives are allowed to testify, while others may submit comments in writing.

If, following testimony and a public hearing, the Commission determines that the appeal does not raise a substantial issue, then the first step is the only step, and the local

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<sup>5</sup> The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (California Code of Regulations, Title 14, Section 13115(b)). Section 13115(c) of the Commission regulations provides, along with past Commission practice, that the Commission may consider the following five factors when determining if a local action raises a substantial issue: (1) the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and the Coastal Act's public access provisions; (2) the extent and scope of the development; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the local government's decision for future interpretation of its LCP; and (5) whether the appeal raises only local issues, or those of regional or statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

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government's CDP decision stands. However, if the Commission finds a substantial issue, the Commission takes jurisdiction over the underlying CDP application for the proposed project, and the appeal heads to the second phase of the hearing on the appeal.

In the second phase of the appeal, if applicable, the Commission must determine whether the proposed development is consistent with the applicable LCP (and in certain circumstances the Coastal Act's public access and recreation provisions). This step is often referred to as the "de novo" review phase of an appeal, and it entails reviewing the proposed project in total. There is no legal deadline for the Commission to act on the de novo phase of an appeal. Staff will make a CDP decision recommendation to the Commission, and the Commission will conduct a public hearing to decide whether to approve, approve with conditions, or deny the subject CDP. Any person may testify during the de novo phase of an appeal hearing (if applicable).

### **D. Summary of Appeal Contentions**

The Appellant contends that the County-approved project raises LCP conformance issues related to hazardous site conditions, views and compatibility, water supply, habitat protection, and circulation. Specifically, the Appellant contends the approved development is inconsistent with the Marin County LCP because the proposed development would lead to problems from excavation and issues associated with the sloping site itself, impacts to public view and character because the project is out of scale for downtown Bollinas, congestion in Bollinas due to bringing in more site users (and leading to problems for emergency access etc.), runoff impacting Bollinas Lagoon, concerns associated with potential flooding/sea level rise, and an increase in air pollution and vehicle miles traveled. See full appeal contentions in **Exhibit 5**.

### **E. Standard of Review**

The standard of review for considering these appeal contentions is the certified Marin County LCP (which is made up of a certified Land Use Plan (LUP) and a certified Implementation Plan (IP)) and the public access policies of the Coastal Act (which include Coastal Act Sections 30210 through 30224). Because the LCP cites to and incorporates Coastal Act Chapter 3 policies, these policies too are applicable here.<sup>6</sup>

### **F. Substantial Issue Determination**

#### **1. Site Development/Hazards**

##### ***Applicable LCP Provisions***

The LCP include provisions related to grading, landform alteration, potential geologic, flood and other hazards. For example, the following standards shall apply to projects involving 150 cubic yards or more of grading and excavation, such as this one:

***New Development and Land Use Policy 24:*** *Development shall be designed to fit a site's topography and existing soil, geological, and hydrological conditions so*

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<sup>6</sup> The Appellant doesn't actually cite to any LCP provisions, only to the Coastal Act.

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*that grading, cut and fill operations, and other site preparation are kept to an absolute minimum and natural landforms are preserved. Areas of a site which are not suited to development because of known soil, geologic, flood, erosion or other hazards that exist to a degree that no amount of corrective work consistent with these policies, including but not limited to the protection of natural landforms, can eliminate or substantially reduce the hazards to the property endangered thereby shall remain in open space.*

***New Development and Land Use Policy 26:*** *Development plans shall include sediment, erosion, runoff controls, and revegetation measures. The following measures shall be included in all-cases; additional conditions as required pursuant to Section 23.08.090 of Marin County Code shall also be included where appropriate.*

- *Sediment basins (including debris basins, desilting basins, or silt traps), shall be installed at the beginning of grading operations and maintained throughout the development process to remove sediment from runoff waters. All sediment shall be retained on site.*
- *The extent of impervious surfaces shall be minimized to the greatest degree possible. Water runoff beyond natural levels shall be retained on-site whenever possible to facilitate maximum groundwater recharge. In order to prevent on-site gulying and downstream erosion of-existing stream channels, the velocity of runoff on and off the site shall be dissipated through the application of appropriate drainage controls so that the runoff rate does not exceed the storm water runoff from the area in its natural or undeveloped state for all intensities and durations of rainfall. Grassed waterways are preferred to concrete storm drains for runoff conveyance.*
- *Permit applications for grading which involve cut slopes in excess of 8 feet or fill in excess of 5 feet shall include a report from a registered soils or civil engineer.*

Additionally, the LCP provides guidance for development in areas of earthquake hazard, such as the subject site:

***Shoreline Protection and Hazard Areas Policy 2:*** *Development shall continue to be required to meet the seismic safety standards of the Alquist-Priolo Act as it has been implemented by the County.*

And the LCP cites to and incorporates Coastal Act Section 30253, which states:

***Section 30253:*** *New development shall do all of the following: (a) minimize risks to life and property in areas of high geologic, flood, and fire hazard. ...*

### **Analysis**



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The Applicants prepared a thorough geotechnical investigation for the site and the proposed project (by Romig Engineers),<sup>7</sup> consistent with the requirements of the LCP stated above, that evaluated hazards associated with the site and that identified measures to be taken to address same in relation to the project and the excavation proposed, including recommendations for appropriate foundation measures and floodproofing in light of potential groundwater issues. The report does not identify any extraordinary hazards that cannot be addressed via standard construction measures, including in relation to earthquakes and potential flooding. With respect to potential fire danger, the dangers at this site are fairly common to all of Bolinas, and do not somehow accrue in a way that would suggest this site too could not be developed consistent with the LCP. The project has been designed to meet all local fire safety requirements, as verified by the local fire protection district during review of the application, and would be required to be developed consistent with the recommendations of the geotechnical investigation. In sum, the County addressed potential hazards associated with development of the site in its approval decision; therefore, the Appellant's contentions do not raise a substantial LCP conformance issue with respect to site development constraints and potential hazards.

## **2. Public Views/Character Compatibility**

### ***Applicable LCP Provisions***

The LCP provides specific guidance for development located in Bolinas to protect public views and local character:

***New Development and Land Use Visual Resource Policy 21:*** Existing development standards and the design review ordinance (Chapter 22.52) shall continue to be enforced. The following explicit standards shall apply to selected areas and projects:

- All new construction in Bolinas, Stinson Beach and Muir Beach shall be limited to a maximum height of twenty-five (25) feet;
- To the maximum extent feasible, new development shall not impair or obstruct an existing view of the ocean, Bolinas Lagoon, or the national or State parklands from Highway 1 or Panoramic Highway.

And the LCP cites to and incorporates Coastal Act Section 30251 that states:

***Section 30251:*** The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

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<sup>7</sup> Titled Geotechnical Investigation: 8-Unit Residential Development, 31 Wharf Road, Bolinas, California (Romig Engineers, March 2020).

***Analysis***

Downtown Bollinas is a relatively small-scale community, where structures are typically one or two stories in height and all development is limited to 25 feet in height by LCP Visual Resource Policy 21. Here, the County-approved development would be two-stories, but the structures would extend to approximately 27 and 33 feet in height above grade<sup>8</sup> to incorporate pitched roofs and dormers, and to step the massing up the hillside. Thus, the County-approved project exceeds maximum allowed height by 1 to 8 feet, with the taller building in the back and further away from Wharf Road.

The LCP also requires front and side setbacks of zero and 5 feet, respectively, for C-VCR zoned parcels such as this one,<sup>9</sup> and the approved project would include a front setback that ranges from 1.5 to 10 feet<sup>10</sup> and side setbacks of 10 feet to the west and zero to the east. Thus, the County-approved project exceeds required setbacks along Wharf Road and on the western property line, but does not include the LCP required 5-foot setback on its east side. Thus, the project is taller and it is closer to the eastern property line than the LCP allows for this site. The reason that the County cites for allowing such a LCP inconsistencies is that the County evaluated the project in relation to State density bonus law (DBL), which allows for certain variations to building standards for affordable housing projects.<sup>11</sup>

Here, although the County-approved project deviates from these two LCP standards, the County found that the project would not have significant coastal resource impacts related to public views<sup>12</sup> and character, and the Commission agrees. Specifically, notwithstanding these technical LCP inconsistencies, the development will generally

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<sup>8</sup> The development, including the commercial space with living space above, would reach 26-foot 7-inch at its maximum point above grade at the eastern portion of the property and closest to Wharf Road (and 26-foot 2-inch at the western portion), and the residences located at the back portion of the property would be 33 feet above grade at the eastern portion of the property (and 31 feet at the western portion).

<sup>9</sup> See LCP Section 22.57.200I (Design Standards Table) in the LCP Implementation Plan.

<sup>10</sup> The building is angled relative to the front property line.

<sup>11</sup> Under the State density bonus law an applicant can be allowed certain waivers, incentives, and concessions when applicable provisions are incorporated into LCPs to account for same. Generally speaking, incentives and concessions are meant to reduce projects costs and may include things such as monetary assistance (e.g., affordable housing grants/bonds, land dedications, etc.) and reduced permitting fees, while waivers are deviations from otherwise required physical development standards in order to make a project feasible (e.g., reduced parking, extra height, reduced setbacks, or increased floor area ratio, etc.). In practice, the DBL is structured to allow larger and more dense projects that would not normally be allowed in exchange for affordable housing construction. However, these State density bonus law provisions do not supersede the Coastal Act's (and by extension the LCP's) coastal resource protection provisions. Although not in effect at the time of the County's CDP decision, the recently updated Marin County LCP (Policy C-HS-9) authorizes application of DBL to affordable housing projects in the coastal zone, which can allow for LCP variations under certain circumstances as long as such variations do not lead to significant coastal resource impacts.

<sup>12</sup> Note that the Appellant also raises issues about private views that might be impacted by the project. However, neither the Coastal Act nor the LCP protect private views, and those are not countenanced here.

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appear as though it generally meets such requirements and will not be inconsistent with the character of the surrounding community.

In terms of setbacks, the County-approved project includes a western setback that is actually double the distance required by the LCP (i.e., it is 10 feet when 5 feet is required), and the Applicant has also obtained a 2-foot easement onto that western property (at 23 Wharf Road) for a portion of the driveway, thus achieving an even larger perceived setback in the public view (see project site plan on page 11 of Exhibit 3). In addition, the western setback is adjacent to an open area on the adjacent site which provides an even greater perceived buffer.<sup>13</sup> As to the eastern setback, while technically zero feet in relation to the property line, it will appear as about 12 feet nearest Wharf Road due to an easement the Applicant has obtained on the adjacent property (at 41 Wharf Road) within which the project's driveway would be located. Thus, although the eastern setback does not meet the LCP minimum, it will appear as though it does, and the side setbacks overall will appear in the public's view to be greater than the minimum required as a result. When considered in terms of the front setback, which pulls the building away from the front property line by 1.5 to 10 feet although the LCP would allow a zero front yard setback, the effect is to help to minimize the perceived development footprint on the site.

As to heights, the front building exceeds maximum height by a foot to a foot and a half roughly, while the rear building exceeds maximums by 6 to 8 feet, as measured and seen from the western to eastern sides of the site (see west and east elevations on pages 32 and 34 of Exhibit 3). However, and assisted by the setbacks described above, especially in terms of the increased front setback, the buildings would actually appear fairly compact, and similar in height as the facade of the next door building (at 41 Wharf Road) (see visual simulations on page 11 of Exhibit 3). In addition, the front building, which would be the most prominent in the streetscape view, exceeds the maximum allowed height by a fairly small amount, roughly 1.5 feet at most. It also includes front articulation with a second-floor deck and first-floor covered walkway (that also emulate nearby building designs), and it is also stepped back with two broken up shed roof components that help it to better recede from the streetscape, all of which helps to reduce its perceived scale as seen from the street. And the rest of the development would be seen against the background of landscaping and the rising slope at the rear to the site, helping to also limit the perceived sense of scale there. Overall, the extra height helps to accommodate roof articulation, including shed roof sections and dormers, that should help to reduce perceived massing. All told, the combination of design measures applied along with the setback distances helps to limit perceived scale, and helps the project to generally fit within the established character and size of downtown Bolinas. Again, see visual simulations of the proposed project on pages 11 of **Exhibit 3**.

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<sup>13</sup> Although it is accurate to point out that the adjacent site may redevelop at some point, and structural development could conceivably move closer to the subject site, it is also accurate that the western buffer for the County-approved project is 100% larger than it is required to be, it includes an additional 2-foot easement area on the adjacent parcel, and provides a greater sense of openness associated with the site than would a minimum 5-foot buffer.

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Thus, the County-approved project, although technically not consistent with two LCP standards relating to height and setbacks, would be visually consistent with nearby existing development notwithstanding LCP variations, and thus compatible with the protection of public views and downtown Bolinas character,<sup>14</sup> and the objectives of the LCP are still achieved in this regard. Although the development would be one of the largest if not the largest structures in downtown Bolinas, it would be perceived as not having a maximum footprint, and it would include substantial facade articulation in the streetscape, especially overhanging decks and pathways on its frontage that are a nod to other downtown building designs. And the project would be seen against the backdrop of the slope behind it, helping to reduce any impacts, especially with its perceived scale. Site design and landscaping should help soften impacts in that respect as well. Again, see pages 7 and 11 of **Exhibit 3**.

Applying the five substantial issue factors in the Commission's regulations, the Commission considers factors such as the significance of the coastal resources affected by the decision and the scope of the project, in addition to the legal and factual support for the local government's decision to approve the project. Although the project includes large structures that do not meet all of the LCP height and setback requirements, the project incorporates design and other features that should allow it to appropriately fit into the community aesthetic and the public viewshed, and should not result in significant adverse public view or compatibility impacts. As such, the Appellants contentions do not raise a substantial LCP conformance issue with respect to these LCP policies.

### **3. Habitat Protection**

#### ***Applicable LCP Provisions***

The LCP protects coastal habitats, including Bolinas Lagoon located some 100 yards to the west of the site. Specifically, the LCP indicates that runoff has historically impacted Bolinas Lagoon, but that former rangelands have been preserved as park and open space, and dairy operations have employed better management techniques, all of which has helped to improve its water quality. The LCP also cites to Coastal Act Section 30230, 30231, and 30232 (each cited by the Appellant), as well as Section 30240(b), which state:

***Section 30230:*** *Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. ...*

***Section 30231:*** *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means,*

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<sup>14</sup> In addition, the County rightly determined that the proposed project would be located entirely within the C-VCR-zoned portion of the property, with the C-RA portion of the property located approximately 50 feet uphill, or north of the development. And the County also rightly determined that the project would protect public views of ridgelines and the natural environment.

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*minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

**Section 30232:** *Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials.*

**Section 30240(b):** *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

### **Analysis**

In terms of potential habitat impacts, the site itself does not appear to contain any sensitive habitats, and the Appellant's concerns are focused on potential impacts from runoff to Bolinas Lagoon. However, the project includes a series of construction related water quality BMPs, including via a Storm Water Pollution and Prevention Program (SWPPP), which should satisfy the above requirements. There is no indication that such measures won't be sufficient to protect water quality during construction. As to post-construction measures, the project includes the installation of 7 bioretention planters to capture and treat stormwater runoff on site, and there is likewise no indication that that should not be sufficient to address water quality concerns. Again, Bolinas Lagoon is also nearly 100 yards to the west of the site and is separated from the site by significant existing development and infrastructure. In sum, the Appellant's contentions do not raise a substantial LCP conformance issue with respect to habitat protection.

### **4. Other**

#### **Applicable LCP Provisions**

The LCP cites to Coastal Act Sections 30252 and 30253 (each cited by the Appellant) which state:

**Section 30252:** *The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing non automobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.*

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**Section 30253:** *New development shall: ... (3) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development. (4) Minimize energy consumption and vehicle miles traveled. ...*

### **Analysis**

The Appellant contends that the project would result in additional traffic that would impact emergency vehicle access to the downtown area, add to traffic congestion, put additional strain on already limited downtown parking availability, and increase air pollution. However, according to the County's traffic analysis, the project would not lead to adverse impacts on traffic, safety or air quality.

In terms of water, water supply is constrained in west Marin.<sup>15</sup> However, the appeal has not presented evidence indicating that an additional eight housing units cannot be served in Bollinas in a way that protects coastal resources, and BPUD has agreed to provide water for the project.

In sum, the Appellant's contentions do not raise a substantial LCP conformance issue with respect to circulation and water supply.

### **5. Substantial Issue Conclusion**

When considering a project on appeal, the Commission must first determine whether the project raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction over the CDP application for such development. At this stage, the Commission has the discretion to find that the project does or does not raise a substantial issue of LCP and Coastal Act (where applicable, such as in this case) conformance. The Commission has in the past and, pursuant to section 13115(c) of its regulations, considered the following five factors in its decision of whether the issues raised in a given case are "substantial": the degree of factual and legal support for the local government's decision; the extent and scope of the development as approved or denied by the County; the significance of the coastal resources affected by the decision; the precedential value of the County's decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

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<sup>15</sup> Since the time that this application was approved, the Marin County Board of Supervisors adopted the previously Commission-approved Local Coastal Plan Update. While the new LCP was not in effect at the time of approval, the Public Facilities and Services section of the Built Environment chapter provides guidance regarding the adequacy of water supply within water system service areas, such as the BCPUD service area. Policy C-PFS-14 requires that new development within a water system service area is served with adequate, safe water supplies.

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In this case, these five factors, considered together, support a conclusion that the appeal does not raise a substantial issue as to the County-approved project's consistency with the LCP. As found by the County, the relatively modest housing project is consistent with LCP policies relating to site constraints and hazards, including New Development and Land Use Policies 24 and 26, Shoreline Protection and Hazard Areas Policy 2, and Coastal Act Section 30253(a). Although the project deviates from maximum height and eastern side setback requirements, overall (and as found by the County) impacts to coastal resources will be minimized and avoided and the project does not threaten significant coastal resources.

First, there is adequate legal and factual support for its decision, and the Appellant does not provide contrary facts or analysis that undermines the County's findings. In particular, potential site development standards and hazards were clearly evaluated, and, as conditioned by the County, the project has to comply with a series of requirements, including a requirement to comply with the underlying geotechnical investigation to address potential geologic hazards concerns. In addition, the appeal does not establish that there are any extraordinary site or hazard concerns that would suggest that additional conditions or measures are needed to ensure protection of coastal resources. In terms of views and character, the County has provided evidence that the project should not result in significant public view or character impacts.

As to project scope, the proposed development is limited to eight housing units on a single property, and thus the extent and scope of the project are relatively small in scale and compatible with the Bolinas community. And when combined with the first factor, this second factor weighs against finding substantial issue.

The third factor, namely the significance of coastal resources affected, also supports a finding of no substantial issue. The project should not lead to adverse impacts to Bolinas Lagoon, and it can be sited and designed in such a way as to protect other important resources here, including in terms of the public viewshed and character/compatibility with its surroundings. No significant coastal resources are threatened by the County-approved project.

Fourth, the County's decision should not set an adverse precedent for future interpretations of the County's LCP. Although the County approved a project that does not meet all of the LCP's development standards relating to building height and setbacks (and cited to State density bonus law as to why that is allowed), the project overall is consistent with the intent of the LCP to protect community character, public views, and sensitive resources, and to ensure structures are protected against hazards and structurally sound. And, importantly, the County LCP was recently updated, and that new LCP is in effect (as of August 12, 2021) and authorizes the application of State density bonus law in an LCP context for affordable housing projects, and thus generally updated LCP policies will apply in the future, limiting the potential effect of any such precedent in any case.

Finally, the project does raise issues of regional or statewide significance, including related to affordable housing, but it appropriately addresses this important consideration

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and is consistent with the Coastal Act policy to encourage the provision of affordable housing in the coastal zone. The fifth factor also supports a finding no substantial issue.

In this case, these five factors, considered together, support a conclusion that the County's approval of a CDP for this project does not raise a substantial issue of Coastal Act and LCP conformance. The proposed project is a mixed-use project including eight new affordable housing units and is not expected to lead to significant adverse impacts to coastal resources. For the reasons stated above, the Commission finds that Appeal Number A-2-MAR-21-0045 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

### **3. APPENDICIES**

#### **A. Substantive File Documents<sup>16</sup>**

- Marin County CDP File P2835

#### **B. Staff Contacts with Agencies and Groups**

- Marin County Community Development Department

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<sup>16</sup> These documents are available for review from the Commission's North Central Coast District office.